

## Internal Revenue Service

Number: **201420013**

Release Date: 5/16/2014

Index Number: 1362.04-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B03

PLR-135633-13

Date:

January 28, 2014

### LEGEND

X =

State =

Y =

Members =

Shareholders =

D1 =

D2 =

D3 =

Dear :

This letter responds to a letter dated August 8, 2013, and subsequent correspondence, submitted on behalf of X requesting a ruling under § 1362(f) of the Internal Revenue Code (Code).

### FACTS

The information submitted states that X was formed under the laws of State on D1 and elected to be treated as a subchapter S corporation effective D1. On D2, Y, an ineligible shareholder, acquired stock in X, thus causing the termination of X's S corporation election. On D3, after the termination was discovered, Y distributed the X stock to its Members, eligible S corporation shareholders, in proportion to their ownership interests in Y.

X represents that the circumstances resulting in the termination of X's S corporation election were inadvertent and were not motivated by tax avoidance or retroactive tax planning. X and its Shareholders have agreed to make such adjustments, consistent with the treatment of X as an S corporation, as may be required by the Service.

### LAW AND ANALYSIS

Section 1362(a) provides that a small business corporation may elect, in accordance with the provisions of § 1362, to be an S corporation.

Section 1362(d)(2)(A) provides that an election under § 1362(a) shall be terminated whenever (at any time on or after the first day of the first taxable year for which the corporation is an S corporation) such corporation ceases to be a small

business corporation. Section 1362(d)(2)(B) provides that any termination shall be effective on and after the date of cessation.

Section 1362(f) provides, in part, that if (1) an election under § 1362(a) by any corporation (A) was not effective for the taxable year for which made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents or (B) was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in the ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation is a small business corporation or (B) to acquire the shareholder consents, and (4) the corporation and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in the ineffectiveness or termination, the corporation will be treated as an S corporation during the period specified by the Secretary.

### CONCLUSION

Based solely on the facts submitted and representations made, we conclude that the termination of X's S corporation election on D2, was inadvertent within the meaning of § 1362(f). Pursuant to the provisions of § 1362(f), X will be treated as continuing to be an S corporation from D2, and thereafter, provided that X's S corporation election was otherwise valid and was not otherwise terminated under § 1362(d). Moreover, from D2 through D3, Members shall be treated as the owners of X stock that was held by Y in proportion to their ownership interests in Y.

Except as specifically ruled above, we express or imply no opinion concerning the federal tax consequences of the transactions described above under any other provisions of the Code. Specifically, we express or imply no opinion regarding whether X is otherwise eligible to be treated as an S corporation.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, we are sending a copy of this letter to X's authorized representatives.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the ruling request, it is subject to verification on examination.

Sincerely,

/s/

Mary Beth Carchia  
Senior Technician Reviewer, Branch 3  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)  
Copy of this letter  
Copy for § 6110 purposes